

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

Notice FC-207

1945-D

For: State and County Offices

Multiple Benefits on Emergency (EM) Loans

Approved by: Acting Deputy Administrator, Farm Loan Programs



1 Overview

**A
Background**

Section 508(n) of the Federal Crop Insurance Act and section 196 of the Federal Agriculture Improvement and Reform Act of 1996 require producers who are eligible for benefits under CAT or NAP and eligible to receive assistance under any other USDA program for the same loss to elect the program under which they will receive benefit. Producers cannot receive benefits under both programs. EM loan instructions in FmHA Instruction 1945-D conflict with this statute.

**B
Purpose**

This notice:

- temporarily resolves a conflict among the following regulations:
 - NAP (7 CFR Part 1437)
 - CAT (7 CFR Part 402)
 - EM loan program (7 CFR Part 1945, subpart D)
- continues an interim policy until FmHA Instruction 1945-D is amended.

**C
Contact**

State Offices shall direct all questions about this notice to LMD.

Disposal Date

March 1, 1999

Distribution

State Offices; State Offices relay to County Offices

8-19-98

2 Action

A Discussion

EM loan instructions conflict with the:

- NAP and CAT regulations
- legislation regarding payment of multiple benefits to producers.

Both the NAP and CAT regulations state that a producer:

- must choose between 1 of these program benefits and any other USDA disaster assistance made available for the same loss
- cannot obtain benefits under either program and an EM loan on the same crop enterprise loss.

A producer who has received an EM loan would be ineligible for any NAP or CAT benefits on losses included in the EM calculations.

In contrast, FmHA Instruction 1945-D, section 1945.163(d), allows EM loans to be made, but requires a deduction by the amount of NAP or CAT assistance or any other compensation for the same disaster losses received. This regulation is inconsistent with statutory authority.

IF...	THEN...
a producer has received a NAP or CAT payment	that person is no longer eligible for an EM loan for that enterprise or enterprises unless the person first repays the CAT or NAP payment.
	the enterprise may not be used to establish a qualifying loss.

Any enterprise on which a NAP or CAT payment has been received should not be shown on FmHA 1945-26 as suffering a loss. However, that producer may receive EM loan assistance for other enterprises that suffered qualifying losses if no payment has been received for those particular enterprises.

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2 Action (Continued)

A

Discussion (Continued)

Examples: A producer suffered qualifying losses on tomatoes and corn and received a NAP payment on the tomatoes but no payment on the corn. That producer may be eligible to receive EM loan assistance on the corn loss, but not on the tomatoes.

A producer suffered a qualifying loss on tomatoes but less than a qualifying loss on corn and received a NAP payment on the tomatoes. That producer is **not** eligible to receive an EM loan on either crop.

Note: EM loan applications that are currently being processed that have been determined eligible, but not yet closed, must be determined ineligible if the decision conflicts with this notice. The applicant must be notified and appeal rights given. The adverse decision letter should refer to the statutory basis for the reversal.

B

Exception

A producer who purchases insurance coverage in excess of CAT may receive an EM loan for the same enterprise, except that the total of both benefits cannot exceed the total loss of the producer and the amount received for the loss under the insurance coverage must be deducted from the EM loan qualifying losses according to FmHA Instruction 1945-D, section 1945.163(d).

C

SED Action

SED's shall:

- instruct Farm Loan Chiefs to train loan officials on interim EM loan eligibility policy according to this notice
 - monitor loan officials to ensure that EM loans are being made that are consistent with statutory authority
 - ensure that loan applications that are in process or have been approved, but not yet closed, and are now ineligible as a result of this notice, are determined ineligible.
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2 Action (Continued)

D

Farm Loan Manager (FLM) Action

FLM's shall:

- check with CED's to determine whether CAT or NAP payments have been received on enterprises for which producers are requesting EM loan assistance

Note: This will be accomplished by submitting FmHA 1945-29 for annotation of any payments received.

- determine producers ineligible for EM loan assistance on any enterprise loss which a CAT or NAP payment was received and not repaid before making the loan
 - deduct from any qualifying EM loan loss the amount of benefits received from additional crop insurance coverage
 - reverse the eligibility determination on any EM loan application that has received a determination of eligibility, but is ineligible as a result of the interim policy continued in this notice
 - provide ineligible applicants with a decision letter and appeal rights.
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